



SURREY HEATH ENFORCEMENT POLICY



Contents

Introduction	3
Legal Status of this Policy	4
Purpose & Scope of this Policy	4
Delegation and Authorisation of Officers	5
Principles of Good Regulation	6
The Regulators’ Code	6
Human Rights Act 1998	7
Data Protection Act 2018	7
The Code for Crown Prosecutors	7
Approach to Dealing with Non-Compliance	8
How Action Taken is Determined	10
Factors that influence our response to breaches	11
Approach to Complaints of non-Compliance	11
Powers of Authorised Officers	11
Decisions on Enforcement Action	13
Determining Appropriate Enforcement Action	17
Review of this Policy	18
Comments and Complaints	18



Introduction

This Policy outlines the approach we take when considering enforcement action. This is an overarching policy that applies to all the Council's Services with enforcement duties, with some services having specific Legislative Guidance and Regulations which set out their own specific enforcement requirements.

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For Surrey Heath the specified functions include those carried out by our environmental health, licensing, corporate enforcement, revenues and benefits and housing services. This policy is an overarching policy with further policies for specific regulatory functions sitting below and making reference to this policy, which detail specific legislation and regulations for those service areas and sets out the enforcement requirements for each function.

Through the Council Strategy, Surrey Heath has made a commitment to keep the Borough safe & secure, protect and enhance our natural environment and maintain clean streets & smart open spaces. The Council carries out a wide range of regulatory roles which seek to deliver upon these commitments and also to meet its many statutory duties of protecting the public, our places and the wider environment. These duties are mainly met by carrying out programmed inspections of premises, responding to complaints, issuing permits and licenses and providing advice.

The appropriate use of the full range of enforcement powers, including prosecution, is important, both to secure compliance with the law and also to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare or a breach of regulations enforced by the Council. We acknowledge the need for firm action against those who flout the law and put others at risk. Officers will be required to use this policy as a guide when making decisions with regards to potential enforcement action.



In deciding on the most appropriate course of action officers will have regard to the principles set out in this policy and the need to maintain a balance between enforcement and other activities, including inspection, advice and education.

Legal Status of this Policy

This Policy was approved by the Executive on XXXX and was adopted by Council on XXXX following an open public consultation between XXXXX and XXXXX.

This Policy will be reviewed every two years, when a change in relevant legislation or statutory guidance occurs or where there is a change in service structure within the Council.

This Policy is available on the Surrey Heath Borough Council website

Purpose & Scope of this Policy

The service areas which fall within the scope of this Policy include:

- Building control
- Corporate Enforcement - including anti-social behaviour, unauthorised encampments, planning enforcement, environmental crime & fraud
- Environmental health and licensing
- Housing
- Revenues and benefits

From time to time this list may change as new legislation is introduced or other acts are repealed.

One of the functions of the Council is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament and the Regulations and Orders made under them (including various byelaws).



Enforcement includes any criminal or civil action taken by the Council aimed at ensuring that individuals or businesses comply with the law.

This policy sets out standards that will be applied across the Council when acting in its role as regulator and enforcing authority and what can be expected from Surrey Heath Borough Council.

This policy also sets out the approach to be followed by authorised officers when making decisions in respect of the Council's compliance and enforcement activities. The Council is committed to ensuring that all authorised officers will act in accordance with this policy.

Council services will work with and consult other agencies, and other service areas within the Council, as necessary where there is a shared or complementary enforcement role.

Officers will take reasonable steps to assist businesses and individuals to comply with the law. However officers will be prepared to ensure compliance by exercising the formal powers delegated to them in the Council's Scheme of Delegation including, where appropriate, prosecution.

In certain circumstances the Council will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

Delegation and Authorisation of Officers

Part 3 of the [Council's Constitution](#) sets out arrangements for delegation of functions including responsibility for enforcement activity. Functions fall into a number of categories including delegation to officers.

Section B of Part 3 of the Constitution provides details of the Scheme of Delegation of Functions to Officers. Officers **MUST** have regard to the Scheme of Delegation as it sets out the extent to which enforcement powers are delegated to officers. In some cases the decision to take enforcement action may lie with the Executive or relevant Council Committee.



Principles of Good Regulation

We will exercise our regulatory activities in a way which is:

- (i) Proportionate
Our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence. We will take a graduated and proportionate approach to enforcement action;
- (ii) Accountable
Our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- (iii) Consistent
Our advice to those we regulate will be robust and reliable and we will respect advice provided by other regulators. The Council shall seek to ensure consistency of enforcement; however, the Council realises that consistency is not a simple matter of uniformity. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case and the relevant responsibilities and intervention systems maintained by the Council;
- (iv) Transparent
We will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted
We will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities and where the Council believes its efforts are able to have an impact.

The Regulators' Code

This policy has been set in accordance with the [Regulators' Code](#) and the [Statutory Code of Practice for Regulators](#). This means that the Council will be open, helpful, fair and careful to ensure that any action required by the Council is



proportionate to the risks. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. Where Statutory Guidance and legislation specifies the action to be taken this legislation takes precedence.

Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Data Protection Act 2018

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018.

The Code for Crown Prosecutors

When deciding whether to institute criminal proceedings the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':



- (i) Evidential Test - is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- (ii) Public Interest Test - is it in the public interest for the case to be brought to court? The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Section 6.

Approach to Dealing with Non-Compliance

- An open, fair and proportionate approach will be taken in dealing with breaches of legislation which are regulated and enforced by the Council. Raising awareness and promoting good practice in regulated areas is the first step in preventing breaches, and officers of the Council will signpost to guidance on aspects of the law where requested to do so.
- Best efforts will be used to resolve any issues where the law may have been broken without taking formal action, or referring the matter to the courts when the circumstances indicate that a minor offence may have been committed and the Council is confident that appropriate corrective action will be taken. However, there may be occasions when the breach is considered to be serious and/or where informal action is not appropriate. In such cases immediate enforcement action may be taken without prior notice and as noted above some services have specific Legislative Guidance and Regulations which set out the enforcement requirements in these services.
- Advice regarding the non-compliance, the actions required and decisions taken at the time of our intervention, along with the reasons for these will be clearly explained. An opportunity to discuss the Council's course of



action will be provided to ensure actions are proportionate and consistent. Where immediate enforcement action is required, the opportunity for discussion may not be given where there is a serious breach or public health or safety is at risk.

- Officers investigate potential breaches of legislation and they are responsible for managing investigations and making decisions on enforcement action. As part of this process, they may consult with colleagues and managers in determining the best and most appropriate course of action. Officers have the power to use a variety of legislation in the course of their duties, and these have been delegated to them in accordance with the Council's Scheme of Delegation as set out in the Council's Constitution document online. In relation to prosecutions, where relevant, officers' cases are reviewed by a manager in line with this enforcement policy, before submitting to the Council's Legal Services department for consideration.
- In some instances, the Council may have shared responsibilities or a complementary role with another enforcement agency. In these circumstances, officers will liaise with that other agency to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings taken are proportionate and appropriate.
- The Council is the enforcing authority for certain activities in relation to its own establishments. Where minor breaches of legislation are observed the outcome will follow that described above for informal action. Should more serious breaches be observed a report will be sent to the appropriate Head of Service with a copy supplied to the manager of the facility. The most serious breaches will be reported to the Chief Executive with a copy to the Head of Service and the manager of the facility.
- The Council will be fair, objective and consistent in its approach to enforcement by following the criteria and guidance set down in relevant legislation and codes of practice. The Council's Achieving Equity Strategy



can be found on the Council's website.

- The Council may publicise information about enforcement action that is taken in line with Government guidance on [publishing sentencing outcomes](#). This is usually once an investigation has been brought to a conclusion via a successful prosecution in Court. Such information may also be publicised on the Council's website and via other social media.

How Action Taken is Determined

- Where there is specific Legislative Guidance and Regulations which set out the enforcement requirements, these will be followed.
- If it is clear that the business or individual is keen to resolve the non-compliance quickly, taking on board and completing the steps recommended by the Council, an informal approach is likely to be taken as opposed to triggering enforcement action. However, if there is a serious breach and/or there is an imminent risk to public health or safety, enforcement action may still have to be taken, but the Council will seek to work with the business or regulated person to resolve the problem as quickly as possible.
- Where evidence is found that a business or individual is showing disregard for the law by deliberately or persistently failing to comply with advice or requests made by the Council, it may be deemed that informal action is not appropriate. Under these circumstances enforcement action may be escalated directly to prosecution or other more severe sanctions where available.



Factors that influence our response to breaches

- If the Council has provided advice or guidance to a business or individual, our officers will make the necessary checks to ensure that, where this relates to a legal requirement rather than best practice, the non-compliance has been rectified.
- The Council may receive referrals from other enforcement bodies which require investigation. These referrals will typically be as a result of the other bodies' inspections or investigations, or intelligence which they have received. The Council will also refer to other enforcement bodies where breaches of legislation which are dealt with by that body are found.

Approach to Complaints of non-Compliance

- Where a complaint of non-compliance relating to a business, or individual is received, the officers investigating this breach will assess the information received and may make further enquiries to determine whether the complaint requires investigation. In assessing a complaint, officers may consult colleagues and managers to help assess what risk may be involved and this will determine what action is taken.

Powers of Authorised Officers

- There are numerous pieces of legislation which the Council as a local authority either has a duty to enforce or adopts or chooses to enforce. The powers available to officers under these different pieces of legislation vary considerably and are outlined in the service-specific enforcement policies which support this policy.
- If officers come across situations where they believe they are being obstructed in carrying out their duties they will always explain the provisions of the relevant legislation in order to resolve the issue.



- Where officers encounter situations where they are being obstructed, they will exercise their powers of entry and obtain formal warrants to enter the property to allow their investigations.
- Surrey Heath actively supports the Primary Authority Partnership scheme and where appropriate will communicate with any identified primary authority as part of the enforcement/compliance process.
- In some cases powers of seizure are used for safety and evidence gathering purposes. Where articles are removed for any of these purposes a receipt or notice will be given at the time of the inspection or as soon as is practicably possible afterwards.
- Officers do not have the power of arrest; however joint working is undertaken with the Police and other agencies. Instances may arise where the Police or other agencies consider that an arrest should be made in connection with an authorised officer's investigation.
- Officers will carry out formal interviews in line with this policy and the Police and Criminal Evidence Act 1984 (PACE) and associated codes of practice.
- In respect of Legislation in England that contains criminal offences, there are strict time limits beyond which the law prevents proceedings being instituted. These time limits vary and are stated in the relevant legislation.
- In relevant cases where either criminal or civil proceedings are intended to be brought by the Council, a report will be prepared containing all relevant evidence that has been gathered during an investigation. This report will be reviewed by the service manager and by the legal department before any proceedings are instigated. The purpose of the review is to carefully consider the available evidence and its merits and to also determine whether there might be any fundamental flaws in the evidence.
- Officers carrying out investigations will keep alleged offenders and witnesses informed about the progress of any investigation as far as their involvement in



the process is concerned.

Decisions on Enforcement Action

There are a range of actions that are available to the Council as set out in the different legislation the Council enforces. Examples of the main types of actions which may be considered are set out below.

a) Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an ‘informal caution’) will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

b) Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.



c) Statutory (Legal) Notices

The Council has powers to issue statutory notices in respect of many breaches. These include: 'Stop Notices', 'Prohibition Notices/Orders', 'Emergency Prohibition Notices/Orders', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

d) Financial penalties

The Council has powers to issue fixed penalty notices or penalty charge notices in respect of some breaches. A fixed penalty notice or penalty charge notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty/penalty charge notice is not paid, the Council may commence criminal proceedings in respect of the breach or take civil enforcement action to recover the penalty charge subject to the provisions of the relevant legislation.

If a fixed penalty/penalty charge notice is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or



recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

e) Injunctive Actions, Enforcement Orders etc.

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

f) Simple Cautions

The Council has the power to issue simple cautions (previously known as ‘formal cautions’) as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will appear on the offender’s criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 – *Simple Cautions: Guidance for Police and Prosecutors* and other relevant guidance.



g) Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s). If the evidential test is satisfied, a prosecution will usually take place unless there are public interest factors which outweigh those in favour of prosecution. The more serious the offence or the offender's record of breaches/criminal behaviour, the more likely it is that prosecution will be required in the public interest.

Assessing the public interest is not merely a matter of adding up the number of factors on each side and seeing which has the greater number. The public interest must be decided on the merits of each individual case and making an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.



h) Refusal/Suspension/Revocation of Licences

The Council issues a number of different Licences, Consents, Registrations and permits. They are applied for by submission of an application, the form and content of which is often specified in law. Applications are generally granted for a limited defined period and will be required to be renewed annually unless otherwise specified.

The Council may be permitted to ask supplementary questions on an application form in order to assist it in reaching a decision on whether the applicant is a fit and proper person to hold such a Licence.

In some cases applications are subject to either a public or interested party consultation process and any application that attracts adverse comment or objection or does not meet Council policy requirements will be referred to an internal civil hearing forum, such as a Licensing sub-Committee, to determine the application.

Most Licences and other permissions have conditions attached which can be standard conditions or specific conditions or a combination of both. These conditions form part of the Licence and lay down requirements that a business or individual must have regard to when trading. Breach of a condition may be a civil or criminal matter.

When considering applications, information supplied with the application together with any previous enforcement action and compliance record can be taken into account when reaching a decision.

Determining Appropriate Enforcement Action

In assessing what enforcement action is necessary and proportionate consideration will be given to, the following principles for enforcement are set out in the Macrory Review:

- 1) aim to change the behaviour of the offender;
- 2) aim to eliminate any financial gain or benefit from non-compliance;



- 3) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- 4) be proportionate to the nature of the offence and the harm caused;
- 5) aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- 6) aim to deter future non-compliance.

Where appropriate decisions about what enforcement action is to be taken may involve consultation between:

- (a) Investigating Officer(s)
- (b) Senior Managers
- (c) Surrey Heath Legal Services

The decision to prosecute a case will be taken by those with authority to do so in accordance with Part 3 of the Council's Constitution.

Review of this Policy

This policy will be reviewed periodically or in line with changes in relevant legislation, or Regulators Code.

Comments and Complaints

All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.

Complaints about the conduct of officers should be made via the Council's corporate complaints procedure.

